

**Chen v Daly**

2016 NY Slip Op 30093(U)

January 15, 2016

Supreme Court, New York County

Docket Number: 157055/15

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
KUNI CHEN,

Plaintiff,

Index No. 157055/15

-against-

**DECISION/ORDER**

DONALD R. DALY and REIS GROUP, LLC,

Defendants.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Notice of Cross-Motion and Affidavits Annexed.....	2
Affirmation in Opposition .....	3
Replying Affidavits.....	4
Exhibits.....	5

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This action arises out of plaintiff Kuni Chen’s dissatisfaction with the calculation of his fifty percent ownership interest in a co-operative apartment by the court in his divorce proceeding. Defendants Donald R. Daly (“Daly”) and Reis Group, LLC (“Reis”) now move for an Order pursuant to CPLR §§ 3211(a) dismissing the complaint. Plaintiff cross-moves for an Order pursuant to CPLR § 3211(c) granting him partial summary judgment on his complaint. The motions are resolved as set forth below.

The relevant facts according to the complaint are as follows. Plaintiff is the owner of his co-operative apartment located at 2 Tudor City Place, Apartment 15A-N, New York, New York (the “Unit”). In or around 2014, plaintiff exercised an option in his divorce settlement, which concluded that same year, to purchase a fifty percent ownership interest in the Unit from his ex-

wife, giving him full one hundred percent ownership of the Unit which had been the marital home and primary marital asset. Pursuant to the court-ordered divorce stipulation (the “Stipulation”), in order to settle the dollar value of a fifty percent equity share in the Unit, the parties were to engage separate “independent” state-licensed real estate appraisers to conduct their respective appraisals and then take a mean average of the two resulting determinations of value from each.

Thereafter, both plaintiff and his ex-wife retained separate real estate appraisers. Plaintiff’s appraiser, Rohit Sarin of A&S Appraisals, set a value of \$900,000 in his report dated March 24, 2014. Plaintiff’s ex-wife’s appraiser, defendant Daly of defendant Reis, set a value of \$1,215,000 in his report dated June 27, 2014, which was thirty-five percent higher than the valuation determined by Sarin and would have represented a record highest price sale for a one-bedroom apartment unit in the entire building of more than three hundred total apartment units. The court in the divorce proceeding, despite plaintiff’s objections, used Daly’s appraisal report as one of the “independent” professional real estate appraisals in order to calculate the final settlement of the Unit. However, plaintiff asserts that the appraisal was not performed correctly and that as a result, he overpaid by more than \$78,000.

After the final disposition of his divorce, plaintiff filed a formal disciplinary complaint against Daly with the New York State Department of State (“DOS”) that led it to investigate Daly’s appraisal. DOS’ Division of Licensing Services instituted an administrative disciplinary proceeding against Daly and a complaint in or around February 2015 reflecting the findings of DOS’ investigation. The complaint states that the DOS referred the matter to a “Regional Appraisal Advisor” for an independent review of Daly’s appraisal and that its evaluation identified issues and concerns with the appraisal that included accuracy of the stated square

footage of the Unit and the correct number of bedrooms therein. The review also concluded that the comparable units that the appraisal cited were an “inappropriate” reflection of the value of the Unit, including one that was a superior penthouse apartment and another that was inapplicable because it had a second bedroom. The review concluded that “the appraiser’s estimate of market value is not supported.” Defendant Daly contested the complaint offering a written statement “affirming that his work product was done properly, and the value correct.” After two adjournments of the disciplinary hearing, on or about May 15, 2015, Daly opted to settle and entered into a consent order with the DOS in which he admitted negligence and wrongdoing rather than contest the allegations at a hearing and agreed to pay a fine of \$1,000 and take an additional seven credit hours of continuing education within thirty days. Thereafter, the DOS discontinued its complaint against Daly “with prejudice.”

Plaintiff then commenced the instant action against Daly and Reis asserting causes of action for negligence and fraud and seeking damages in the sum of \$78,750 plus costs, attorney’s fees and punitive damages. Defendants now move to dismiss plaintiff’s complaint and plaintiff cross-moves for partial summary judgment.

The court first turns to defendants’ motion to dismiss the complaint and finds that it must be granted on the ground that plaintiff’s action is barred by the doctrine of judicial immunity. It is well-settled that individuals serving in judicial capacities along with those who are delegated judicial or “quasi-judicial” functions are immune from civil lawsuits based on any actions taken in their official capacities. *See Mosher-Simmons v. County of Allegany*, 99 N.Y.2d 214 (2002); *see also Rokhsar v. East Coast Appraisal C.I.R.*, 2015 WL 1623796 (Sup. Ct. N.Y. County 2015). “This judicial immunity privilege is regularly applied to expert witnesses when such witnesses are appointed by the court.” *Rokhsar*, 2015 WL 1623796 at \*2. Indeed, “the common

law provide[s] absolute immunity from subsequent damages liability for all persons – governmental or otherwise – who [a]re integral parts of the judicial process.” *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983).

In the instant action, this court finds that the action must be dismissed as it is barred by the doctrine of judicial immunity based on the allegations in the complaint. Specifically, plaintiff alleges, and defendants do not dispute, that defendants Reis and Daly were hired pursuant to a “court-ordered” stipulation which directed the parties to engage separate “independent” and neutral state-licensed real estate appraisers to conduct their respective appraisals and then take a mean average of the two resulting determinations of value from each. Further, plaintiff alleges, and defendants do not dispute, that the court in the divorce proceeding, despite his objections, used Daly’s appraisal report as one of the “independent” and neutral professional real estate appraisals in order to calculate the final settlement of the Unit. Thus, based on plaintiff’s allegations, it is clear that defendants were court-appointed and were delegated quasi-judicial functions, bestowing upon them judicial immunity from civil suits.

Plaintiff’s assertion that defendants are not entitled to judicial immunity because they were not “court-appointed” as they were hired directly by his ex-wife and not by the court is without merit. It is clear from the allegations in plaintiff’s complaint that although plaintiff’s ex-wife hired defendants directly, she was ordered to do so by the court presiding over the divorce proceeding. Moreover, regardless of who initially chose defendants as the appraiser in the divorce proceeding, it is clear that defendants were acting as a neutral appraiser on behalf of the court as the court, despite plaintiff’s objections, used defendants’ appraisal report in order to calculate the final settlement of the Unit.

Thus, as this court has granted defendants’ motion to dismiss the complaint, plaintiff’s

cross-motion for an Order pursuant to CPLR § 3211(c) granting him partial summary judgment is denied.

Accordingly, defendants' motion to dismiss is granted and plaintiff's cross-motion for summary judgment is denied. The complaint is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 1/15/16

Enter: CK  
J.S.C.

**CYNTHIA S. KERN**  
J.S.C.